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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,665	02/10/2004	Andreas Clausen	104035.273507	5096

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EXAMINER	
LAMM, MARINA	

ART UNIT	PAPER NUMBER
1616	

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/776,665	CLAUSEN	
	Examiner	Art Unit	
	Marina Lamm	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-24 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 7/6/04 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 2/10/04.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-24 are pending in this application filed 2/10/04, which is a continuation of PCT/EP02/08744, filed 8/6/02, which claims priority to German applications filed 8/10/01 and 10/11/01.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-7, 10-14 and 17-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4 and 14 of U.S. Patent No. 6,468,514 ('514). An obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claim(s) because the examined claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645

(Fed. Cir. 1985). Although the conflicting claims are not identical, they are not patentably distinct from each other because the presently claimed invention overlaps with that previously claimed. Thus, Claims 1-7, 10-14 and 17-24 of the instant invention are directed to a cosmetic cleansing composition comprising one or more surfactants selected form the group consisting of sulfates and sulfonates (e.g. sodium lauryl ether sulfate), and one or more alkylpolyamphopolycarboxyglycinates, wherein alkylpolyamphopolycarboxyglycinates are present in an amount sufficient to reduce the adsorption by the skin of the one or more surfactants during cosmetic cleansing of the skin. Claims of '514 are directed to a method for reducing the binding of a sodium lauryl ether sulfate surfactant to the surface of the skin comprising selecting a co-surfactant which decreases or prevents binding by mixing the co-surfactant with the sodium lauryl ether sulfate surfactant before contacting the sodium lauryl ether sulfate surfactant with the surface of the skin. Claim 14 of '514 recites sodium and disodium cocoamphoacetate as a co-surfactant. The claims of '514 do not recite the specific concentrations of sodium lauryl ether sulfate and/or cocoamphoacetate co-surfactant. However, the portion of the specification in '514 that supports the recited combination of the compounds, includes the concentrations that would anticipate claims of the instant invention. See Examples 7-10. Claims 1-7, 10-14 and 17-24 cannot be considered patentably distinct over Claims 1, 4 and 14 of '514 when there is a specifically disclosed embodiment in '514 that supports the claims that patent and falls within the scope of claims herein because it would have been obvious to one having

ordinary skill in the art to modify the composition of Claim 14 of '514 by selecting a specifically disclosed embodiment that supports that claim, i.e., the specific concentrations. One having ordinary skill in the art would have been motivated to do this because that embodiment is disclosed as being a preferred embodiment (e.g. Examples).

3. Claims 1-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 of copending Application No. 10/770,096 ('096). Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1-24 are generic to all that is recited in Claims 1-32 of copending Application '096. That is, Claims 1-32 of copending Application '096 fall entirely within the scope of Claims 1-32 of the instant invention, or, in other words, Claims 1-32 are anticipated by Claims 1-32 of copending Application '096. Specifically, the component (a) and component (b) and their concentrations recited in the instant claims are the same as compounds as those claimed in the claims of copending Application '096.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7, 10-14, 17-20 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Elliott et al. (US 5,905,062), supplied by the Applicant.

Elliott et al. teach liquid personal cleansing compositions containing sodium laureth sulfate in combination with cocoamphocarboxyglycinate in the claimed concentrations. See col. 7, lines 28-64; col. 8, lines 3-9; col. 9, lines 3-38; col. 13, lines 60-62; col. 14, Examples I, II, IV and VI.

Thus, Elliott et al. teach each and every limitation of Claims 1-7, 10-14, 17-20 and 22-24.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al. (US 5,905,062).

Elliott et al. applied as above. The reference generally teaches 1-15% of an individual surfactant, but does not explicitly teach the claimed concentration of sodium laureth sulfate. However, the determination of optimal or workable concentration of

sodium laureth sulfate within the reference's generic disclosure by routine experimentation is obvious absent showing of criticality of the claimed concentration. One having ordinary skill in the art would have been motivated to do this to obtain the desired cleansing properties of the composition.

8. Claims 8, 9, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott et al. (US 5,905,062) in view of Sebillotte-Arnaud et al. (US 6,821,942).

Elliott et al. applied as above. The reference does not explicitly teach the ethoxylated glycerol isostearates and/or fatty alcohol polyglycol ethers of the instant claims. However, Sebillotte-Arnaud et al. teach using the claimed oxyalkylenated compounds in an amount of 1-20% by weight in cosmetic cleansing compositions in combination with foaming surfactants and/or amphoteric surfactants. See Abstract; col. 3, lines 56-67; col. 4, lines 59-67; col. 5; col. 6, lines 15-16; col. 7, line 55; col. 8, line 29; col. 10, line 24. The compositions of Sebillotte-Arnaud et al. have good foaming and rheological properties. See col. 2, lines 21-29; col. 13, lines 44-52. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the compositions of Elliott et al. such that to employ compounds such as ethoxylated glycerol isostearates and/or fatty alcohol polyglycol ethers, of Sebillotte-Arnaud et al. One having ordinary skill in the art would have been motivated to do this to obtain creamy, cosmetically appealing products as suggested by of Sebillotte-Arnaud et al.

Conclusion

9. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MICHAEL HARTLEY
PRIMARY EXAMINER

ml
3/6/05